

STATEMENT OF THE
NATIONAL BORDER PATROL COUNCIL
OF THE
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFL-CIO

BEFORE THE
SUBCOMMITTEE ON INVESTIGATIONS
COMMITTEE ON HOMELAND SECURITY
UNITED STATES HOUSE OF REPRESENTATIVES

ARMED AND DANGEROUS:
CONFRONTING THE PROBLEM OF BORDER INCURSIONS

PRESENTED BY
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The National Border Patrol Council appreciates the opportunity to present the views, concerns and recommendations of the 10,500 front-line employees that it represents regarding the growing problem of armed incursions across the southwest border of the United States by current and former Mexican soldiers and law enforcement officers.

Over the course of the past several decades, hundreds of such incursions have been documented by the Border Patrol and other law enforcement agencies. While the overall number of these incursions has not increased significantly during the past few years, the level of violence associated with them has escalated dramatically. This should be cause for alarm on both sides of the border. In the four incidents described below, U.S. Border Patrol agents were shot at by current or former Mexican officials trespassing on American soil:

- **March 14, 2000, shortly after 10:00 p.m., near Santa Teresa, New Mexico (about fifteen miles west of El Paso, Texas):** Two Mexican Army High Mobility Multipurpose Wheeled Vehicles (HMMWVs or Humvees) carrying about sixteen armed soldiers drove across the international boundary and into the United States. The vehicles pursued a Border Patrol Ford Expedition outfitted with decals and emergency lights (which were activated for much of the time that it was being pursued) over a mile into the United States. The lead vehicle, containing nine soldiers armed with seven automatic assault rifles, one submachine gun, and two .45 caliber pistols, was captured by the Border Patrol after it became stuck in sand. The second vehicle pursued a Border Patrol agent on horseback and fired a shot at him. The soldiers then disembarked from the vehicle, fired upon one more Border Patrol agent and chased another agent before fleeing to Mexico in their vehicle. After being held by the Border Patrol for several hours, the captured soldiers and their vehicle, weapons, and ammunition were returned to Mexico. The Mexican government later denied that its soldiers had fired any shots.

- **October 24, 2000, around 12:00 p.m., near Copper Canyon, about thirteen miles east of San Ysidro, California:** Two U.S. Border Patrol agents observed a group of ten men dressed in military-style uniforms with tactical vests and carrying high-powered military rifles, at least two of which had bayonets affixed. Approximately eight shots were fired toward the location of the agents. The agents took cover in thick brush and identified themselves in Spanish as Border Patrol agents, but were nonetheless pursued

by some of the soldiers, who entered the United States by crossing a well-maintained barbed-wire fence. The other Mexican soldiers set up two sniper positions, one in Mexico and another in the United States. The soldiers searched the area, pointing their weapons in the direction of the Border Patrol agents and ordering them in Spanish to come out of the brush. The agents did not comply, but instead identified themselves again and told the soldiers to return to Mexico. When more Border Patrol agents neared the scene, the soldiers retreated to Mexico and drove off in a minivan. The agents returned to the scene of the incident on their own time two days later by legally crossing into Mexico through the Tecate Port of Entry. They took photographs of relevant evidence, recovered two recently-fired .380 caliber brass cartridges, and submitted all of this evidence to their supervisors. The government of Mexico subsequently confirmed that one of its military units had been operating in that area, but denied that any shots had been fired.

- **May 17, 2002, at approximately 8:30 p.m., near Papago Farms, about 90 miles southwest of Tucson, Arizona:** A U.S. Border Patrol agent patrolling about five miles north of the international border spotted a military helicopter flying toward Mexico. Shortly afterwards, the agent encountered a Humvee with three heavily-armed soldiers in the back. As the agent was quickly departing the area to avoid an armed confrontation, his vehicle was struck by a bullet that entered a rear window on the passenger's side and exited through a window on the driver's side. About four-and-a-half hours earlier, a Tohono O'odham police ranger patrolling near that location reported being chased by a Humvee containing several armed men wearing military-style uniforms. The Mexican government denied that any of its military units were operating in that area.

- **June 30, 2005, at approximately 12:30 p.m., east of Nogales, Arizona:** Two U.S. Border Patrol agents encountered a group of ten to twelve men wearing black military-style uniforms about a mile north of the international border. Some of the men opened fire on the agents, and at least one of them utilized a hand-held radio to direct the gunfire of several hidden shooters. A total of more than fifty high-powered rifle rounds were fired at the agents, both of whom were seriously wounded. The gunmen retreated back to Mexico using military-style cover and concealment tactics. Nearly five hundred pounds of marijuana were recovered during a search of the area.

While it is evident that *bona fide* Mexican military units were involved in the first three incidents, the latter assault may have been perpetrated by henchmen of the drug cartels, a significant number of whom are former Mexican soldiers or law enforcement officers. One such group, Los Zetas, works for the Gulf Cartel, and many of its members received training from the U.S. military and/or law enforcement agencies while they were employed by the government of Mexico.

The Mexican government cannot avoid responsibility for the actions of these renegade groups, however, simply by denying any official involvement. By allowing them to operate with impunity along its northern border, Mexico bears some of the responsibility for their actions. It is inconceivable that our government would turn a blind eye to groups of armed criminals furthering the illegal entry of contraband into one of its neighboring nations, especially if they were threatening and/or shooting at foreign law enforcement officers.

Most of the armed incursions along the southwest border coincide with the smuggling of illegal drugs into the United States. This factor alone, however, does not explain the high incidence of armed incursions by Mexican officials. Although large quantities of illicit narcotics are also smuggled across the border between the United States and Canada, there have been no documented armed incursions by Canadian military or law enforcement personnel. The relevant difference between the two nations is something that diplomats generally don't acknowledge, but that front-line law enforcement officers are acutely aware of and must deal with on a daily basis. A culture of corruption permeates every level of Mexico's military and law enforcement agencies. Law enforcement officers in Mexico are paid very low wages, and it is widely known and accepted that they augment their income by taking and extorting bribes. While the salary of Mexican soldiers is slightly higher, the temptation of large payoffs from the drug cartels is too much for many of them to resist, especially when there are few, if any, adverse consequences for doing so. Given this environment, the large number of corrupt Mexican police and soldiers should not surprise anyone. Although some politicians and high-level bureaucrats try to downplay the severity of this widespread problem, it negatively affects international law enforcement cooperation at the field level, as America's front-line law enforcement officers are unable to trust their counterparts south of the border.

Even with the best of intentions on the part of Mexico to purge this rampant corruption from its military and law enforcement agencies, it would require major reforms and a substantial amount of time to accomplish that goal. In the meantime, the United States must take immediate and decisive action in order to protect its sovereignty and secure its borders:

- The United States needs to recognize that it cannot rely upon its southern neighbor to stop the flow of illegal drugs across the southwest border, and must stop supplying financial aid to Mexico for that purpose.
- Officials at the highest levels of our government must inform officials at the highest levels of the government of Mexico in clear and unambiguous terms that armed incursions across our border will no longer be tolerated.
- The border between the United States and Mexico must be clearly marked in order to eliminate confusion and prevent unintentional incursions.
- The ineffective and unsafe tactic of stationing Border Patrol agents at fixed positions in close proximity to the international boundary must be discontinued immediately.
- America's *de facto* open border policy must be terminated by eliminating the employment magnet that entices millions of people to enter the United States illegally every year in search of work. The only way to do this is by enacting legislation that allows employers to easily determine who has a legal right to work in our country and then strictly enforcing that provision. Only one piece of pending legislation would ensure this result — H.R. 98, the Illegal Immigration Enforcement and Social Security Protection Act of 2005. All of the other legislative proposals suffer from the fatal flaw of allowing one document to be used to prove employment eligibility and another to establish identity. As outlined in a recent report from the Government Accountability Office, this would lead to widespread identity fraud and would seriously undermine worksite enforcement efforts.¹ As long as our law enforcement resources at the border are primarily occupied with millions of laborers, it will be impossible to intercept the thousands

¹ Immigration Enforcement: Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts (GAO-05-813 – August 2005)

of criminals who are also exploiting our porous borders.

- The Border Patrol and other border law enforcement agencies must also be provided with the tools, training, and support necessary to accomplish their vital missions. H.R. 4044, the Rapid Response Border Protection Act of 2005, would provide many of these desperately-needed measures.
- United States military units should be stationed at strategic locations near the southwest border in order to be able to quickly respond to and deal with future armed incursions by the Mexican military. The Border Patrol and other civilian law enforcement agencies do not have the proper equipment nor training to safely and effectively respond to such incursions.²

In summary, the level of violence associated with the long-standing problem of armed incursions into the United States by Mexican officials is escalating dramatically, posing a serious threat not only to the lives of law enforcement officers along our southwest border, but also to the security of our Nation. The United States needs to take decisive and forceful action to confront this growing menace before another tragedy occurs.

² This should not be construed as a call for the military to enforce our immigration laws, which would be problematic for two principal reasons. First, it requires a great deal of training to ensure that someone is prepared to effectively enforce our complex immigration laws. Border Patrol agents receive nineteen intensive weeks of basic academy training in a wide variety of topics, and an additional six months of on-the-job training. Attempting to shorten this training would likely result in numerous civil rights violations, including wrongfully arresting and incarcerating people who have a legal right to be in this country. Second, training soldiers to enforce civilian laws would needlessly endanger them during military combat situations, as the rules of engagement between the two settings differ dramatically. In civilian law enforcement situations, the use of force is permissible only in self-defense or the defense of an innocent third-party, and even then only as a last resort. It is well-established that people instinctively react in a crisis according to their training. At best, people who are trained as both soldiers and law enforcement officers would hesitate in a crisis situation, endangering themselves. At worst, they would respond inappropriately, potentially endangering innocent people. An unfortunate incident that occurred near Redford, Texas on May 20, 1997 illustrates this problem. A squad of four U.S. Marines was conducting counter-drug border surveillance when it was fired upon by an 18-year-old high school student who was tending his family's herd of goats. The Marines outflanked the youth and fired a single fatal shot at him. While this response would have been appropriate in a military combat situation, it was entirely inappropriate in a civilian law enforcement setting.